# RECENT CASES.

BENEFICIAL ASSOCIATION—MEMBERS—REQUIREMENTS—WAIVER OF FORFEITURE.—MOERSCHBAECHER V. ROYAL LEAGUE, 59 N. E. 17 (Ill.).—The by-laws of a benefit association provided that any member who engaged in the saloon business should forfeit his beneficial rights. Although the association received his dues knowing decedent's business, the court *held* that the beneficiary could not recover.

The decision of the appellate court, which is here affirmed, in declaring that there was no waiver of the right of forfeiture, seems contrary to the best authority. Forfeitures are not favored in law, and conditions limiting or avoiding liability are strictly construed against the insurer and liberally in favor of the assured. *Ins. Co.* v. *Young*, 86 Ala. 421; *Ins. Co.* v. *Raddin*, 120 U. S. 123. In principle at least, also, this decision is contrary to *Ins. Co.* v. *Hick*, 125 Ill. 361. See *Supreme Court of Honor* v. *Sullivan*, 59 N. E. 37 (Ind.).

COLLISION ON HIGHWAY—SERVANTS—SCOPE OF AUTHORITY.—PERLSTEIN V. AM. EXP. CO., 59 N. E. Rep. 194 (Mass.).—A servant driving his master's team deviated from his prescribed course and negligently collided with a vehicle. *Held*, the master was not liable for the damage.

Though in general the master is liable for an injury caused by a tool placed in his servant's hands, as shown in *Southwick* v. *Estes*, 7 Cush. 385, yet this rule here succumbs to the fact that the servant was acting beyond the scope of his authority. *Bowler* v. *O'Connell*, 162 Mass. 319; *Davis* v. *Houghtelin*, 33 Neb. 582.

CONTRACTS—RECISSION—RESTORATION OF CONSIDERATION.—YAPLE V. NEW YORK O. & W. CO., 68 N. Y. Supp. 292.—In an action for injuries to the person and property of the plaintiff, defendants having pleaded a release, the trial judge ruled that plaintiff could not properly reply that such release was procured by deceit, and assert that he did not know that he was signing a release for personal injuries and that the release was only signed for injuries to the property, without offering to restore the consideration. *Held*, this ruling was incorrect.

It is a general rule that a party who seeks to rescind a contract into which he has been induced to enter by fraud must restore to the other party whatever he has received by virtue of the contract. *Cobb* v. *Hatfield*, 46 N. Y. 533. But this rule applies to those cases only where that which was received and must be returned was the consideration or settlement which the receiver intended to make, and understood he was making, and which he seeks to avoid by reason of fraudulent practices of the other party which led him to agree to its terms. *Bliss* v. *Railroad Co.*, 160 Mass. 447; *Mullen* v. *Old Colony Railroad Co.*, 127 Mass. 86.